

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

355B0128

HOUSE BILL NO. 1251

Introduced by: Representatives Waltman, Cutler, Lockner, Roe, Schaunaman, Schrempp, and
Sperry and Senators Lawler, Brown (Arnold), and Dennert

1 FOR AN ACT ENTITLED, An Act to provide a process for a manufacturer to place a lien on
2 or dispose of a die, mold, form, or pattern.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Customer," any person who causes a manufacturer to fabricate, cast, or otherwise
6 make a die, mold, form, or pattern or who provides a manufacturer with a die, mold,
7 form, or pattern to manufacture, assemble, cast, fabricate, or otherwise make a
8 product for a customer;

9 (2) "Manufacturer," any person who fabricates, casts, or otherwise makes or uses a die,
10 mold, form, or pattern for the purpose of manufacturing, assembling, casting,
11 fabricating, or otherwise making a product for a customer including a tool or die
12 maker;

13 Section 2. In the absence of any agreement to the contrary, the customer has all rights and
14 title to any die, mold, form, or pattern in the possession of the manufacturer. If a customer does
15 not claim possession from a manufacturer of a die, mold, form, or pattern within three years

1 following the last use of the die, mold, form, or pattern, all rights and title to any die, mold, form,
2 or pattern is transferred to the manufacturer for the purpose of destroying or otherwise disposing
3 of the die, mold, form, or pattern.

4 Section 3. If a manufacturer chooses to have all rights and title to any die, mold, form, or
5 pattern transferred to the manufacturer, the manufacturer shall send written notice by registered
6 mail to the chief executive office of the customer or, if the customer is not a business entity, to
7 the customer at the customer's last known address indicating that the manufacturer intends to
8 terminate the customer's rights and title by having all the rights and title transferred to the
9 manufacturer pursuant to this Act. The notice shall include a statement of the customer's rights
10 as set forth in section 4 of this Act.

11 Section 4. If a customer does not respond in person or by mail to claim possession of the
12 particular die, mold, form, or pattern within ninety days following the date the notice was sent,
13 or does not make other contractual arrangements with the manufacturer for storage of the die,
14 mold, form, or pattern, all rights and title of the customer, except patents and copyrights, shall
15 transfer to the manufacturer. The manufacturer may then destroy or otherwise dispose of the
16 particular die, mold, form, or pattern as the manufacturer's own property without any liability
17 to the customer.

18 This section may not be construed in any manner to affect any right of the customer under
19 federal patent or copyright law or federal law pertaining to unfair competition.

20 Section 5. A manufacturer has a lien, dependent on possession, on any die, mold, form, or
21 pattern in the manufacturer's possession belonging to a customer, for the balance due the
22 manufacturer from such customer for any manufacturing or fabrication work, and in the value
23 of all material related to the work. The manufacturer may retain possession of the die, mold,
24 form, or pattern until the charges are paid.

25 Section 6. Before enforcing any lien, notice in writing shall be given to the customer, whether

1 delivered personally or sent by registered mail to the last-known address of the customer. The
2 notice shall state that a lien is claimed for the damages set forth in writing for manufacturing or
3 fabrication work contracted or performed for the customer. This notice shall also include a
4 demand for payment.

5 Section 7. If the manufacturer has not been paid the amount due within sixty days after the
6 notice has been received by the customer as provided in section 6 of this Act, the manufacturer
7 may sell the die, mold, form, or pattern at a public auction. Before a manufacturer may sell the
8 die, mold, form, or pattern, the manufacturer shall notify the customer by registered mail, return
9 receipt requested. The notice shall include the following information:

- 10 (1) The manufacturer's intention to sell the die, mold, form, or pattern thirty days after
11 the customer's receipt of the notice;
- 12 (2) A description of the die, mold, form, or pattern to be sold;
- 13 (3) The time and place of the sale; and
- 14 (4) An itemized statement for the amount due.

15 Section 8. If there is not a return of the receipt of the mailing or if the postal service returns
16 the notice as being nondeliverable, the manufacturer shall publish notice of the manufacturer's
17 intention to sell the die, mold, form, or pattern in a newspaper of general circulation in the
18 customer's last known place of business. The notice shall include a description of the die, mold,
19 form, or pattern.

20 Section 9. If the sale of the die, mold, form, or pattern is for a sum greater than the amount
21 of the lien, the excess shall be paid to any prior lienholder known to the manufacturer at the time
22 of the sale and any remainder to the customer, if the customer's address is known, or the
23 secretary of revenue for deposit in the general fund if the customer's address is unknown to the
24 manufacturer at the time of the sale.

25 Section 10. No sale may be made pursuant to this Act if the sale would be in violation of any

1 right of a customer under federal patent or copyright law.